Chapter 6-000 Home and Community-Based Model Waiver Services for Children with Mental Retardation and Their Families

6-001 Introduction: The Nebraska Medical Assistance Program (NMAP) offers, under a model waiver of statutory requirements, an array of community-based services to children who are eligible for Intermediate Care Facility for the Mentally Retarded (ICF/MR) services. The purpose of the model waiver services is to offer options to children who would otherwise require ICF/MR services.

Nebraska's model waiver - limited in amount, scope, and duration - designates 200 slots for waiver services each year. The Department of Social Services will determine priority for waiver eligibility. Children receiving specialized services on June 1, 1991, who meet waiver eligibility criteria, will be given first priority for waiver services. Further determinations will be based on the following criteria, representing those children most at risk:

1. Families at the point of relinquishing a child due to lack of services;
2. Young adults leaving the public school system;
3. Persons transitioning from state supervision to independent living; and/or
4. Families in crisis situations with inappropriate services.

The Nebraska Department of Social Services shall provide opportunities for fair hearings as defined in 42 CFR 431, Subpart E, to clients, or their legal representatives, who are denied eligibility for waiver services, who are not given the choice of home and community-based services as an alternative to ICF/MR services, or who are denied the option of home and community-based waiver services of their choice (see 465 NAC 2-001.02 and 2-006 ff.).

6-001.01 Legal Basis: Section 1915(c) of the Social Security Act permits the Health Care Financing Administration (HCFA) to approve waivers of statutory requirements requested by the states. Federal regulations concerning home and community-based waivers appear at 42 CFR 440.180 and Part 441, Subpart G.

The Nebraska Department of Social Services is the single state agency responsible for administering Nebraska's Home and Community-Based Services Model Waiver for Children with Mental Retardation and Their Families. Functions of the model waiver may be assigned through interagency agreements.

6-001.02 Definitions: The following definitions apply to the model waiver services for children with mental retardation.

Agency: An administrative structure and the persons within that structural entity defined by law, charter, license, contract, or agreement that may be delivering specialized services.

Caregiver: A person or persons who reside with the client and have the daily responsibility for the client's care and supervision.

Case Management: Services provided to waiver clients under the State Plan which consists of -

1. Assessment (or arrangement for assessment) of individual and family needs level and requirement for support and services;
2. Development of individual support and service goals;
3. Coordination of personal, agency, non-agency, and professional resources to develop and attain individual support and service goals and access needed medical, social, habilitation, education, employment, housing, and other services.

Case Manager: The person in the certified agency who is responsible for coordinating the waiver client's Individual and Family Support Plan (IFSP) and services provided.

Certification: The status granted to specialized services providers by the Nebraska Department of Health indicating approval of submitted proposal to provide state plan or waiver services. This may be substantiated by on-site surveying.

Client: Any person with mental retardation and/or a related condition who receives the services of a provider.

Community Team: Team representing educational services, community agencies/ organizations, service providers, and/or others whom the client and family are currently involved with or who may be of assistance in meeting the needs of the client and family.

Consent: Agreement by the client or the client's legal guardian in accordance with applicable state and federal law or regulation.

Department: The Department of Social Services (DSS).

Documentation: Written, dated, and authenticated evidence.

Environmental Modifications: Physical adaptations to the family home necessary to ensure the health, welfare, and safety of the client or enable the client to function with greater independence in the home.

Family Reunification Plan: A written description of efforts to support and enhance the client's involvement with family.

Governing Authority: The entity that provides oversight, governance, and policy direction for the operation of an agency's programs.

Habilitation Services: Waiver services defined as an aggregate set of essential interventions, designated in the IFSP, which develop and retain the client's capacity for independence, self-care, and social and/or economic functioning.

Habilitative Day Care: Child care provided for less than 12 hours per day to allow the usual caregiver(s) to accept or maintain employment.

Homemaker Services: General household activities necessary for maintaining and operating the client's natural home to allow the usual caregiver to attend to and nurture the client.

Individual and Family Support Plan (IFSP): A written plan describing services to be furnished, frequency, and type of provider furnishing services needed to support the family and maintain the child's placement with the family and/or in the community. The IFSP for minor clients (under age 19) in out-of-home) placements must include a plan for family reunification unless parental rights have been or are being terminated. The IFSP for young adults must address efforts to support and enhance family involvement. The IFSP may also be known as the plan of care or Individual Habilitation and Family Support Plan.

Individual Education Program (IEP): The written statement for a verified handicapped child (see 92 NAC 54-006) which specifies the special education and related services necessary to assure that child a free, appropriate public education.

Intermediate Care Facility for the Mentally Retarded (ICF/MR): An institution certified by the Nebraska Department of Health that provides habilitative and health services for persons with mental retardation or related conditions.

Mental Retardation: The significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested before the person attains age 22.

Model Waiver: Nebraska Home and Community-Based Model Waiver for Children with Mental Retardation and Their Families.

Nursing Facility: Facility certified as a Title XIX Nursing Facility under Medicaid.

Provider: An agency or individual(s) that has entered into an agreement for the delivery of waiver services.

Related Conditions: Conditions causing challenges similar to mental retardation. A client with a "related condition" is one who has a severe, chronic disability other than mental illness which -

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. In the case of a child under three years of age, results in at least one developmental delay;
5. In the case of a person three years of age or older, results in substantial functional limitations in three or more of the following areas of major life activity:
   a. Self-care;
   b. Receptive and expressive language development;
   c. Learning;
   d. Mobility;
   e. Self-direction;
   f. Capacity for independent living; and
   g. Economic self-sufficiency; and
6. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

Respite Care: Temporary relief to the family from the continuous support and care of a child with a disability.

Service: A direct intervention for increasing and/or maintaining the client's ability for independent living and self-determination.

Setting: Agency-staffed facility in which waiver services are provided. This location requires certification.

Site: In-home or community location where waiver services are provided. This location does not require certification.

Slot: The waiver designation for the services received by clients under the waiver, used to calculate Nebraska's quota of waiver clients.

Specialized Service: Service provided specifically for persons with developmental disabilities by a certified agency.

Training: An organized approach to the provision of habilitation services.

Transition Plan: A written plan completed by the Individual Education Program (IEP) team indicating the plan for transition from school to work or adult living. This plan is required in Nebraska for all students age 16 or older receiving Special Education services.

Waiver Year: June 1 through May 31.

6-001.03 Summary of Forms: The following forms are used for the Model Waiver Services. Instructions for these forms are located in the appendix.

Form Number	Form Name	Manual Reference
DSS-1CMR	Request Form	480-000-50
DSS-2CMR	Developmental Index III	480-000-51
DSS-4A	Social Services Provider Authorization	480-000-8
DSS-6	Client's Notice of Action	480-000-10
	Proposal to Provide Specialized Services Under the Authority of the Nebraska State Medicaid Plan or Home and Community-Based Services Waiver for Persons with Mental Retardation and Related Conditions	480-000-201

6-002 Description of Waiver Services: Nebraska's model waiver allows for the provision of habilitation services, respite care, homemaker services, environmental modifications, and habilitative day care services to promote client independence and integration. Case management services to waiver-approved clients are provided under the State Medicaid Plan.

6-002.01 Habilitation: Habilitation is training in activities of daily living and training to overcome or compensate for the effects of mental or physical disabilities. Habilitation consists of individual or group teaching to actively develop or assist in developing the skills of children with a disability who need training in daily living and self-care such as: eating and drinking, toileting, dressing, mobility skills, socialization skills, communication skills, sensori-motor and other skills directed at increasing independent functioning. Habilitation may occur in the client's home or in the community (if provided as an out-of-home placement in an agency-staffed setting, services must be available on a 24-hour basis) to actively increase the functional or behavioral ability of a child with a disability to live and function within his/her family or community. This may include instruction/guidance to the caregiver (non-Medicaid provider) to promote independence of the waiver client.

Habilitation is provided based upon the waiver client's IFSP. Family members shall not be Medicaid-funded habilitation providers.

6-002.01A Transportation: Transportation of clients to services indicated in the IFSP will be included as a component of habilitation and the cost of transportation will be included in the established rates for waiver services.

6-002.02 Respite Care: Respite care is available only to clients residing in their family home. It is designed to provide temporary relief to the family from the continuous support and care of a dependent child with a disability. Components of respite care service are supervision, tasks related to the individual's physical needs, tasks related to the individual's psychological needs, and social/recreational activities. Respite care shall be:

1. Designated in the client's IFSP; and
2. Provided for a period of time determined by the team as meeting the client's needs, not to exceed 30 days per waiver year.

Respite care may be provided in the client's home or out of the home. If respite care is provided by a hospital or nursing facility, the individual is not considered a facility resident under the model waiver.

Home and community-based respite care may be authorized for one or more of the following situations:

1. An emergency or crisis arises which -
   a. Requires the usual caregiver's absence; or
   b. Places an unusual amount of stress on the caregiver;
2. The caregiver requires health services (e.g., dental care, doctor appointments, hospitalization, temporary incapacity of caregiver);
3. The caregiver needs relief for regular, prescheduled, personal activities (e.g., religious services, grocery shopping, or club meetings);
4. The caregiver requires irregular periods of "time out" for rest and relaxation; or
5. Caregiver vacations.

6-002.03 Homemaker: Homemaker services are available only to clients residing in their family homes. These services are the general household activities necessary for maintaining and operating the client's family home to allow the usual caregiver to attend to and nurture the client.

Any or all homemaker components may be provided to the client or the client's family as documented in the IFSP. These include:

Escort Service: Accompanying those clients who are physically or mentally unable to travel or wait by themselves in order to obtain health services, employment services, family planning services, housing services, legal services, maintenance services, and social services.

Errand Service: Providing service in relation to needs described for escort service when not generally accompanied by the client.

Essential Shopping: Obtaining food, clothing, housing, or personal care items.

Food Preparation: Preparing meals as necessary.

Housekeeping Activities: In-home cleaning and care of household equipment, appliances, or furnishings.

Laundry Service: Washing, drying, ironing, folding, and storing laundry in the client's home; or utilizing laundromat services on behalf of the client or client's family.

6-002.04 Environmental Modifications: Environmental modifications are available only to clients residing in their family homes. These modifications are the physical adaptations to the home. These shall be identified in the IFSP as necessary to ensure the health, welfare, and safety of the client or to enable the client to function with greater independence in the home.

Environmental modifications may include:

1. Installation of ramps, lifts, and grab bars;
2. Widening of doorways;
3. Adaptation of bathrooms; and/or
4. Adaptations and/or installation of electric and plumbing systems for the welfare of the client.

Approved modifications shall not:

1. Include adaptations or improvements which are not of direct medical or remedial benefit to the client;
2. Exceed $3,000 during the first year of usage of modifications; and
3. Exceed $300 per year in subsequent years for total costs of maintenance and further modifications.

6-002.05 Habilitative Day Care: Habilitative day care is available only to clients residing in their family home. This service consists of child care provided for less than 12 hours per day to allow the usual caregiver(s) to accept or maintain employment. Habilitative day care may be provided in the client's family home or in a site approved, registered, or licensed by the Nebraska Department of Social Services. Habilitative day care shall not be provided by a family member who is the usual caregiver. Habilitative day care needs will be addressed in this service as specified in the IFSP. Any interventions and/or training services provided as a component of habilitative day care, shall be:

1. Coordinated with any habilitation provided by the habilitation services provider;
2. An extension of, rather than a duplication of, any services provided by the habilitation services provider; and
3. Monitored by the case manager.

6-002.06 Case Management: Case management consists of the activities necessary to locate, coordinate, and monitor necessary and appropriate services for the client and family. The purpose of case management is to assist the client and family in gaining access to all necessary medical, social, habilitation, and related services. The case manager is responsible for chairing the IFSP meeting and assuring the provision of all services delineated in the plan to prevent institutionalization of the client. Case management shall be provided by the Department of Public Institutions' Developmental Disabilities Division (DD). Case management services are described in 480 NAC 4-004 ff.

6-003 Waiver Responsibilities of State Agencies: The Nebraska waiver is organized as an interagency effort at the state level, utilizing a variety of community providers for service delivery.

The Department of Social Services is the lead and responsible agency for the Nebraska Medical Assistance Program. The Department of Public Institutions contains the Developmental Disabilities Division, which is responsible for planning, promulgating regulations, recommending budgets and monitoring services for persons with developmental disabilities. The Department of Health conducts licensing and certification surveys for ICF/MR facilities and licensing for Centers for the Developmentally Disabled. These three Departments are under the direct executive oversight of the Governor.

6-003.01 Department of Social Services (DSS): As the state Medicaid agency, DSS is responsible for administration of the Medicaid program and in turn for the administration of the model waiver which includes:

1. The establishment of interagency agreements;
2. Planning and policy development;
3. Establishment and interpretation of regulations;
4. Client intake which includes eligibility determination, prior authorization of services, IFSP approval, and ongoing monitoring of plan implementation;
5. Contact with and/or establishment of community teams;
6. Establishment of provider agreements with waiver providers of non-specialized services;
7. Implementation of the waiver;
8. Monitoring of the waiver; and
9. Budgeting.

6-003.02 Department of Public Institutions (DPI): Under an interagency agreement with DSS to implement the waiver, DPI is responsible for -

1. Gathering and compiling statistics needed for management and reporting purposes and forwarding those reports to DSS;
2. Maintaining required records;
3. The following procedures for waiver providers of specialized services:
   a. Establishing provider agreements for delivery of waiver services;
   b. Ensuring compliance with 205 NAC 1-5, Regulations for Organizing and Implementing Mental Retardation Services, and reporting areas of non-compliance to the Department of Health and DSS;
   c. Providing formal training and ongoing technical assistance to address identified needs and the dissemination of information to providers;
   d. Establishing individual client service agreements which link waiver reimbursement to client need and service plan expectations;
   e. Working with providers to obtain additional information or clarifications on waiver IFSPs and documenting and tracking provider compliance with periodic DSS policy directives; and
   f. Processing and monitoring billings for specialized services provided.

6-003.03 Department of Health (DOH): Under an interagency agreement with DSS, DOH is the agency responsible for -

1. Certifying specialized service provider agencies for the waiver with on-site reviews to ensure compliance with waiver standards (480 NAC 6-000 ff. and 7-000 ff.) and proposals to provide services;
2. Reporting areas of noncompliance to DSS and DPI;
3. Issuing to providers, as appropriate, a statement specifying areas of noncompliance or a letter of compliance following on-site monitoring;
4. Maintaining records and providing reports of certification surveys to DSS and DPI; and
5. Review of files, records, and/or programmatic information with site visits for verification as directed by DSS for waiver services provided in sites other than certified settings.

6-004 Record Keeping: DSS, DPI, DOH and waiver service providers have specific record keeping responsibilities under the waiver.

6-004.01 DSS Record Keeping: DSS shall maintain the following waiver-related records.

6-004.01A Client Case File: DSS shall maintain in client case files the following information for all waiver-approved clients:

1. Form DSS-1CMR, "Request Form;"
2. Form DSS-2CMR, "Developmental Index III", diagnostic evaluations, IFSP, related multi-disciplinary reports and evaluations, and any other information used in determining eligibility;
3. "ACCESS Worksheet"
4. Form DSS-6, "Client Notice of Action";
5. Form DSS-4A, "Social Services Provider Authorization;" and
6. Denials of waiver services for an individual.

6-004.01B Agency Records: DSS shall maintain the following information:

1. Provider agreements; and
2. Billing and payment records.

6-004.02 DPI: The Department of Public Institutions shall maintain for four years the following material:

1. IFSPs for each waiver client;
2. Documentation which supports the provision of services to each client served under the waiver;
3. Any other documentation determined necessary by DSS to support selection and provision of services under an IFSP;
4. Financial information necessary to allow for an independent audit under the waiver program;
5. Documentation which supports requests for payment under the waiver; and
6. Contracts with agencies for the provision of services.

6-004.03 DOH: The Department of Health shall maintain for four years the following material:

1. Provider proposals submitted for certification purposes;
2. Copies of all correspondence related to the proposals, including requests for additional information and responses;
3. Records of complaints received and action taken;
4. Corrective action plans and action taken;
5. Annual certification approval/denial correspondence; and
6. Narrative documentation of on-site visits and findings.

6-004.04 Provider Record Keeping: Providers of waiver services must maintain for four years the following material:

1. Documentation which supports selection and provision of services under the IFSP to each client served under the waiver, including dates of service provision and identification of provider;
2. Financial information necessary to allow for an independent audit under the waiver;
3. Documentation which supports requests for payment under the waiver; and
4. Provider agreements.

6-005 Client Eligibility Criteria: To be eligible for waiver services, the client must -

1. Be age 20 or under (Note: For individuals continuing in Special Education beyond their 21st birthday, eligibility may continue until the Special Education services end.);
2. Not be receiving services under other home and community-based services waivers;
3. Require ICF/MR level of care (see 480 NAC 6-005.01) but for the availability of a home and community-based services waiver or currently reside in an ICF/MR but plan to move to a community setting;
4. Be eligible for the Nebraska Medical Assistance Program (NMAP);
5. Have received an explanation of ICF/MR services and community-based waiver services and elected to receive waiver services;
6. Have a current diagnosis of mental retardation and/or related conditions. (NOTE: Diagnosis contained in the IEP may verify this requirement); and
7. Meet one of the priority criteria established in 480 NAC 6-001.

6-005.01 ICF/MR Level of Care Criteria: DSS applies the following criteria to determine the need for ICF/MR services:

1. The client must have mental retardation documented in an evaluation current within three years of initial determination of waiver eligibility, and/or meet the definition of related conditions in 480 NAC 6-001.02. If the client has a dual diagnosis (i.e., mental retardation and mental illness, or a related condition and mental illness), the diagnosis of mental retardation or a related condition must take precedence over the diagnosis of mental illness; and
2. The client can benefit from habilitation that is directed toward -
   a. The acquisition of developmental, behavioral, and social skills necessary for the client's maximum possible individual independence; or
   b. For dependent clients where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status.

6-005.02 Client Identification Phase-In Process: Children receiving specialized services on June 1, 1991, shall be reviewed and waiver eligibility determined prior to accepting new referrals for waiver services. The phase-in process shall be completed within six months of certification of these regulations.

6-005.03 Client Identification: Any individual with mental retardation or related conditions can apply for and receive waiver services, provided that a slot and funds are available, all eligibility criteria are met, and the client identification process is followed. Upon receipt of initial referrals, the Disability Services Specialist shall -

1. Contact parent(s), legal guardian, and/or child to verify referral information and arrange for interview;
2. Review any available information, which may include verification of Medicaid eligibility;
3. Meet with the parent(s), legal guardian, and/or child to explain model waiver and other possible services;
4. Interview parent(s), legal guardian, and/or child. If supports and/or services are needed and desired, complete the waiver request, Form DSS-1CMR, indicating choice of service provider(s). Obtain needs information using a functional assessment tool as a guideline as necessary/appropriate and obtain consents for release of information as needed;
5. Make an initial determination of possible resources to meet child's and/or family's needs. If appropriate services are available, assist the family as needed in obtaining these services and follow-up;
6. If services are not readily available, begin initial completion of "ACCESS Worksheet". The Disability Services Specialist shall coordinate with DPI, the Department of Education and others as needed to secure the following information:
   - Current Individual Education Program (IEP) or its equivalent;
   - Current Transition Plan for students age 16 or older;
   - Current Individual Program Plan (IPP); and
   - Related multi-disciplinary reports and evaluations;
7. For children not currently receiving specialized services, consult with the family to establish a community team as appropriate. The team shall be identified based on the needs of the child and family and selected by the family. In addition to the family, the team may be composed of representatives from educational services, service providers, advocacy groups, or other community resources. The team shall convene to discuss the needs as identified by the family and through the assessment process and to identify potential resources to meet these needs. The team shall determine if community resources can meet the child and family's needs and/or if waiver options should be explored. If the child and family have immediate needs that the community team is unable to address, determine if waiver options should be explored;

8. After review of information, determine if child meets eligibility criteria for waiver services as specified in 480 NAC 6-005. If child meets all eligibility criteria except for NMAP eligibility, refer to local DSS office and assist the family as needed in the process of making application. The Disability Services Specialist shall coordinate with Income Maintenance staff to ensure that consideration is given to possible waiver eligibility;
9. If child meets initial eligibility criteria, notify DDD and submit to them a copy of the "ACCESS Worksheet".
    a. DDD shall contact the identified provider(s) to see if the provider(s) is willing to complete a proposed IFSP, the Developmental Index III and other relevant information as needed.
    b. If the provider(s) is willing to serve the client, the case manager shall work with the client, family, other provider(s), and other involved or potentially involved parties to complete the proposed IFSP, identifying specialized and non-specialized services needed to meet the needs, and the Developmental Index III. This information shall be submitted to DPI.
10. Upon review of required documentation, determine if the client requires ICF/MR level of care and if client's needs can be met through waiver services. If community services are available and/or appropriate instead of or in addition to waiver services, the case manager shall assist the family in accessing these services;
11. Upon determination of waiver eligibility, prior authorize waiver services as specified in 480 NAC 6-005.05 for up to a twelve-month period based upon the needs identified in the plan; and
12. When eligibility is determine, or at any time during the process that ineligibility, inappropriateness or unavailability of waiver services is determined, complete Form DSS-6, "Client Notice of Action," and send to the client and/or the client's legal representative.

If child is determined ineligible for the waiver and is currently receiving specialized services, notify the family who may share recommendations from the "ACCESS Worksheet" with the case manager. If child is determined ineligible for the waiver and is not receiving specialized services, notify the family and the participants of the community team meeting.

6-005.04 Annual Determination: The following procedures of the Waiver Eligibility Determination Process must be completed on an annual basis:

1. Eligibility determination (480 NAC 6-005);
2. Client assessment and IFSP development;
3. Client and/or legal guardian consent for waiver services; and
4. Prior authorization of services.

6-005.05 Authorization of Waiver Services: All waiver services and providers must be prior authorized on Form DSS-4A within the following guidelines:

1. The maximum number of units of waiver services entered on Form DSS-4A is based on information contained in the IFSP. The IFSP team will determine units of service to meet identified client needs.
   a. For habilitation services, a unit of service may be defined as:
      (1) An hourly rate for clients in out-of-home placement;
      (2) An hourly rate for in-home support services, (average daily cost of prior authorized in-home habilitation shall not exceed the cost of out-of-home habilitation services); and
      (3) An hourly rate for the days when this service is not covered by the client's IEP;
   b. For respite care services, a unit is defined as an hour, or if eight or more hours are provided in a calendar day, a day. Respite shall not exceed 30 days per waiver year;
   c. For homemaker services, a unit is defined as an hour;
   d. For environmental modifications, services shall be authorized not to exceed a one-time cost of $3,000 or $300 per waiver year;
   e. For habilitative day care, a unit is defined as an hour.
2. Waiver services must be prior authorized and may be authorized for a maximum of 12 months;
3. The date of waiver services authorization shall be the date of admission to waiver services; and
4. Previously approved waiver clients shall have priority over other clients if sufficient waiver slots are not available. Priority consideration shall also be given those meeting the criteria specified in 480 NAC 6-001.

6-005.06 Denial of Eligibility: Eligibility for services under the waiver may be denied for the following reasons:

1. A client fails to meet the eligibility criteria specified in 480 NAC 6-005;
2. The unavailability of a waiver slot;
3. The client and/or the client's legal representative or requested provider has not supplied needed information;
4. The client and/or the client's legal representative did not sign Form DSS-1CMR, "Request for Services;"
5. Client needs are not being met through waiver services;
6. An appropriate IEP and/or IFSP is not available and/or in place; or
7. Lack of implementation of the IFSP, including a family reunification plan as appropriate.

The Disability Services Specialist shall send Form DSS-6 to the client and/or client's legal representative notifying him/her of reason for determination of ineligibility. Notice of reduction or termination of services shall be mailed at least ten calendar days before the effective date of action. For clients found to be ineligible for waiver services after being authorized for those services, the Disability Services Specialist shall also complete a Form DSS-4A.

6-006 Billing and Payment: Waiver services will not be furnished to clients while they are inpatients of a hospital, nursing facility, or ICF/MR. Room and board is not included as a cost which is reimbursed under this waiver, except when provided as part of respite care in a facility approved by NMAP that is not a private residence. Costs for medical transportation and therapies currently covered under the Medicaid State Plan are excluded (not covered).

NMAP will refuse to offer home or community-based services to any client for whom it can reasonably be expected that the cost of these services furnished to that client would exceed the cost of the level of care provided in an ICF/MR.

6-006.01 Specialized Services: DPI, as specified in the interagency agreement with DSS, shall submit monthly billings to DSS for specialized waiver services. The billings shall indicate the units of service provided to each client. The rates paid to providers of specialized services are determined using the estimated cost of providing services. Rates may be adjusted based on DPI determination of actual costs.

6-006.02 Non-Specialized Services: The providers of non-specialized waiver services shall submit billings to DSS as specified in the provider agreement. The rates paid to providers of these services shall be specified in the provider agreement, shall be usual and customary or less for similar services in the community, and shall not exceed rates charged to private-paying persons for comparable services.

6-007 Provider Certification Process: Waiver services are provided only by an approved provider having a current agreement or contract to provide waiver services.

6-007.01 Specialized Service Providers: Any provider proposing to provide habilitation services and/or respite care (as a specialized service) shall comply with the following process. Case management services for waiver clients shall be provided by DPI's DDD in accord with 480 NAC Chapter 4.

6-007.01A Proposal: The prospective provider shall submit in writing to the Department of Health (DOH) the "Proposal to Provide Specialized Services Under the Authority of the Nebraska State Medicaid Plan Home and Community-Based Services Waiver for Persons with Mental Retardation or Related Conditions," (see 480-000-201). The proposal must include a description for the provision of waiver services and shall be authorized by the provider's governing authority to ensure that the provider has in place all other assurances required by the waiver. DOH shall review the provider's written proposal for the provision of waiver services and shall grant approval or disapproval of the proposal. DOH may verify information contained in the proposal during on-site visits. Providers currently certified to provide home and community-based services under the adult mental retardation waiver are considered certified and approved for this model waiver. The provider shall submit to the Department of Health the address of each setting for approval to provide waiver services.

6-007.01B Certification: Once the proposal is approved by DOH, certification may be granted to the provider and each setting submitted by the provider. Certification may be granted for up to twelve months at a time with DOH having the discretion to extend certification for an additional two months as conditions warrant. Certification is required for each provider and each setting in which a waiver client receives services. Each setting must be certified before a waiver client receives waiver-funded services in the setting. Prior to expiration of certification, the provider shall send an affidavit to the Department of Health confirming and/or updating the information contained in the original proposal to provide services or submit a new proposal.

6-007.02 Non-Specialized Service Providers: Any provider not certified under 480 NAC 6-007.01 proposing to provide homemaker services, respite care (as a non-specialized service), environmental modifications, and/or habilitative day care services shall comply with the following process.

6-007.02A Proposal: The prospective provider shall submit in writing to the Department of Social Services a proposal to provide waiver services. The Department will review the proposal to determine compliance with service standards.

6-007.02B Agreement: The Department will enter into provider agreements with those who meet compliance. The provider agreement will specify a maximum one year time period, but may be terminated at any time upon the Department's determination of noncompliance with waiver provider standards. The Department will evaluate service delivery and monitor standards compliance on at least an annual basis. Prior to expiration of the waiver agreement, the provider shall send an affidavit to the Department confirming and/or updating the information contained in the original proposal to provide services or submit a new proposal.

6-007.03 Survey Process

1. DOH surveyor(s) shall conduct unannounced surveys to establish compliance or noncompliance with waiver standards and provider proposals for waiver and State Plan providers and the settings in which services are received. For services provided in sites other than certified settings, DOH may conduct a review of files, records and/or programmatic information with site visits for verification as directed by DSS.
2. DOH shall send to the provider a statement specifying areas of noncompliance or a letter of compliance with the regulations set forth in 480 NAC Chapter 7-000.
3. The provider must provide in writing to DOH an acceptable plan of correction within ten days (calendar) of receipt of the statement from the Department of Health. The plan of correction must be specific in identifying a planned action on how the deficiency has been or will be corrected and the expected correction date.
4. DOH shall determine whether the plan of correction is acceptable. If DOH finds the plan of correction unacceptable, DOH returns it to the provider who shall submit a revised acceptable plan of correction within five days of notice from DOH.
5. DOH may conduct a resurvey after 30 days (calendar) of receipt of the acceptable plan of correction to determine compliance and/or progress toward compliance and obtain a new acceptable plan of correction for those deficiencies not corrected. Any additional visits may be made at the discretion of DOH.
6. A decision on continuation of certification will be made by DOH within 45 days of ending date of survey.
    a. If the decision is to continue certification, a letter on continuance will be sent to the provider.
    b. If the decision is non-continuation of certification, a 30-day written notice of the decision to terminate certification will be sent by certified mail.

7. If a setting is found deficient in meeting specified standards, DOH may continue certification of the setting for Medicaid purposes under the following conditions:
   a. The deficiencies, individually or in combination, do not jeopardize the client's health and safety, nor seriously limit the provider's capacity to give adequate care or provide habilitation to meet client needs; and
   b. The written plan of correcting the deficiencies is found acceptable.
8. If a provider or setting is found deficient in meeting specified standards, DOH shall terminate certification of the provider or setting for Medicaid purposes under the following conditions:
   a. The deficiencies pose immediate and serious threat to the client's health and safety;
   b. The written plan for correcting the deficiencies is found to be unacceptable;
   c. The accepted written plan, including habilitation, was not implemented and/or maintained or the setting has established a pattern of not maintaining corrections.
9. Procedures for situations involving immediate and serious threat:
   a. DOH shall give verbal notification to the provider of the situation involving immediate and serious threat during the course of the survey;
   b. DOH shall notify the provider in writing (within two working days following verbal notification) of the circumstance of the immediate and serious threat situation, the decision to proceed with termination action and advising the provider of the right to due process.
   c. If the provider submits evidence of correction or the circumstances causing the immediate and serious threat no longer exist and safeguards are in place to ensure client health and safety, the termination action may be lifted. DOH may conduct a revisit to verify the above.
   d. The termination will become effective 20 days after the survey exit unless the threat has been removed or corrected.
10. The provider may be certified by DOH even though a specific setting operated by that provider is decertified.
11. Settings operated by a provider cannot be certified if the provider is not certified.
12. If during the survey process, DOH surveyors observe or become aware of issues pertaining to client eligibility for the waiver (i.e., services received, habilitation, etc.), such issues will be referred to DSS. DSS will review to determine eligibility status.

6-007.04 Appeal Rights: A provider of waiver services has the right to appeal for a hearing on an action that has a direct adverse effect on the provider (see 471 NAC 2-003 ff.). Hearings are scheduled and conducted according to the procedures in 465 NAC 2-001.02 ff. and 2-006 ff.

A provider of waiver services has the right to appeal DOH certification determinations and shall follow procedures in accordance with Rules of Practices and Procedures of 184 NAC Chapter 1.

6-007.05 Provider Contracts: After the provider of specialized services has been certified by DOH, DPI may approve the provider and contract with the provider for the provision of waiver services. The provider must have a current approved contract on file with DPI to provide waiver services. Waiver providers of specialized services to clients with developmental disabilities must also be recognized by DPI as a service provider under the provisions of 205 NAC 4.

6-008 Provider Responsibilities: To maintain status as an approved provider of services to waiver clients, a provider shall -

1. Comply with all applicable regulations as set forth in 480 NAC Chapters 6-000 and 7-000 and with all assurances made in the provider's proposal to provide services;
2. Fulfill all management and reporting stipulations under the waiver as required by DSS, DPI, and DOH;
3. Cooperate with all monitoring and review activities required under waiver regulations;
4. Attend training on waiver services as deemed necessary by the Department;
5. Permit inspection of all waiver-related records by state and federal officials or their representatives;
6. Submit information (specialized providers submit to DPI, non-specialized providers submit to DSS) as appropriate to assist the Department in determining eligibility for waiver services. This includes the -
   a. Form DSS-2CMR, "Developmental Index III";
   b. IFSP; and
   c. Other information as required; and
7. Case managers shall submit any significant modifications in the IFSP or other information affecting clients' eligibility, service locations, or status with the model waiver. Note: The IFSP must be reviewed by the case manager, client, and family (as appropriate) at a minimum of every six months. Documentation of the review and any resulting change in the IFSP shall be submitted to DPI.

6-008.01 Subcontractor Responsibilities: Subcontractors are subject to all provider certification standards and all regulations pertaining to the provision of waiver services. Noncompliance on the part of a subcontractor will be considered noncompliance on the part of the provider. Before implementation, subcontractor agreements involving services to waiver clients must be submitted to DPI.